

Applicants : MARCHAL et al.  
USPN : 10/558,930  
Filed : February 1, 2007  
Examiner : John G. Pickett  
Page : 6

Atty. Dkt. No. : 1143-PCT-US  
Art Unit : 3728  
Date of Office Action : July 27, 2009  
Date of Response : January 27, 2009

#### **REMARKS**

Claims 1-3, 5-10, and 12-17 are currently pending in this application. To expedite the prosecution of this application, and without conceding the position of the Examiner, Applicants have hereby amended claims 1, 3, 5, 8, 10 and 14 to 17. Applicants have also cancelled claims 4,11 and 18-22 without prejudice to Applicants' right to pursue the cancelled subject matter in a subsequent patent application. Support for the amended claims can be found, inter alia, in the cancelled claims and specification. Applicants submit that there is no issue of new matter. Accordingly, Applicants hereby respectfully request the entry of this Amendment. Upon entry of this Amendment, claims 1 to 3, 5 to 10 and 12 to 17 will be pending and under examination in this application.

#### **Rejection under 35 U.S.C. § 112**

Claims 3, 10, 11 and 14-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicants have amended Claims 3 and 10 to recite a proper Markush group. In addition, Applicants have deleted the terminology "combinations thereof" and replaced it with "mixtures of two or more of such items".

Applicants further have amended Claim 14 to support the antecedent in the claim.

With respect to Claim 15, Applicants have deleted the terminology "combinations thereof".

Applicants : MARCHAL et al.  
USPN : 10/558,930  
Filed : February 1, 2007  
Examiner : John G. Pickett  
Page : 7

Atty. Dkt. No. : 1143-PCT-US  
Art Unit : 3728  
Date of Office Action : July 27, 2009  
Date of Response : January 27, 2009

Lastly, Applicants have deleted the terminology "of any suitable size or shape" in Claim 16.

### **Rejection under 35 U.S.C. § 102**

Claims 1, 3 to 8 and 10-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Suzuki (JP 11-321952 A) with Lemoine et al. (US 2002/0052431 A1 used in an evidentiary manner). This rejection is respectfully traversed.

To better define the claimed invention and to further distinguish the claimed invention from Suzuki's, Applicants respectfully amend claims 1 and 8 of the claimed invention as follows:

1. (Currently amended) A consumable package comprising a clear-binder product and a packaging material, ~~said~~ the packaging material comprising: a plastic or polymer material with a melting point from 50 to 150°C; and a clear-binder material, wherein the plastic or polymer material is compatible with the clear-binder material thereby facilitating the dispersion of the packaging material into the package during a melting process.

8. (Currently amended) A consumable container containing a clear-binder product wherein ~~said~~ the container is composed of: a plastic or polymer material with a melting point from 50 to 150°C; and a clear-binder material, wherein the plastic or polymer material is compatible with the clear-binder material thereby facilitating the dispersion of the packaging material into the container during a melting process.

Applicants : MARCHAL et al.  
USPN : 10/558,930  
Filed : February 1, 2007  
Examiner : John G. Pickett  
Page : 8

Atty. Dkt. No. : 1143-PCT-US  
Art Unit : 3728  
Date of Office Action : July 27, 2009  
Date of Response : January 27, 2009

It is evident from the above that the claimed invention revealed a packaging material (claim 1) or container (claim 8) not solely comprising a plastic or polymer material (or 'thermoplastic' being the term applied by Suzuki) but also a clear binder material. The 'pre-compatibilization' of plastic or polymer material with the clear-binder material facilitates the subsequent dispersion of the packaging material or container into the clear-binder product contained in the packaging material or container during heat processing (last sentence of paragraph [0016] of the claimed invention). The packaging material is designed to be compatible with the contained clear-binder product and in a form suitable for its final use (paragraph [0037]).

According to the Office Action, Suzuki discloses a consumable package comprising a clear binder (paragraphs [0005] and [0014]) and a packaging material/container (bag, paragraph [0005]). More specifically, Suzuki discloses in paragraph [0004] 'putting a binder composition for pavement into a bag which consists on thermoplastics' and therefore appears to fall within the scope of the claimed invention.

Applicants respectfully submit that there are significant differences between Suzuki and the claimed invention. Suzuki discloses a container/packaging material (bag) that is made of thermoplastics film or sheet, more specifically low density polyethylene, ethylene-vinyl acetate copolymer, polybutadiene, etc. (paragraph [0018]). These thermoplastics film bags are known art that are available in the market commercially and they cannot be used to contain the clear-binder product effectively. This is because, although these thermoplastics film bags similarly melt with the clear-binders product, they are not designed to do so. As such they would contaminate the clear-binder product when they are melted together with the clear-binder product. Such

Applicants : MARCHAL et al.  
USPN : 10/558,930  
Filed : February 1, 2007  
Examiner : John G. Pickett  
Page : 9

Atty. Dkt. No. : 1143-PCT-US  
Art Unit : 3728  
Date of Office Action : July 27, 2009  
Date of Response : January 27, 2009

contamination would result in the clear-binder product suffering a change of physical and/or chemical properties. The irreversible clear-binder product once contaminated cannot achieve their initial commercial purpose upon such contamination.

While it may be obvious to use thermoplastics film to pack the clear-binder product, it is a further challenge and unobvious to formulate a packaging material that is both compatible as well as one that does not change the physical and/or chemical properties of the clear-binder product when melted for final use.

Applicants respectfully submit that conceptually as well as in the technical implementation thereof, the claimed invention is different from Suzuki. The main underlying difference between Suzuki and the claimed invention is that in the claimed invention, the packaging material or container comprises a plastic or polymer material and a clear-binder material. As the packaging material or container contains the clear-binder material, it provides for clear-binder materials to be "pre-blended" such that the resultant packaging material or container are "pre-compatibilized" for dispersion into the clear-binder product during a melting process (paragraphs [0013] and [0022] of the claimed invention). The packaging material or container of the claimed invention are consumable such that they would be incorporated into the packaged clear-binder product upon its heating or melting (paragraph [0033] of the claimed invention).

It is not anticipated to formulate a packaging material or container that is compatible with the clear-binder product to be packaged when melted. It is a further challenge and unanticipated to formulate a packaging material or container that does not impart or modify the properties of the clear-binder product when melted for final use. Suzuki does not disclose, suggest, or

Applicants :	MARCHAL et al.	Atty. Dkt. No.	: 1143-PCT-US
USPN	: 10/558,930	Art Unit	: 3728
Filed	: February 1, 2007	Date of Office Action	: July 27, 2009
Examiner	: John G. Pickett	Date of Response	: January 27, 2009
Page	: 10		

otherwise indicate that the packaging material/container described therein comprises a clear-binder material (i.e. the material to be packed).

A further characteristic which distinguishes the claimed invention from Suzuki's lies on the thickness of the bag produced therein. Suzuki (paragraph [0020]) reveals that thick polyethylene bags are undesirable as it is 'inferior to the melting nature' and therefore the thickness of the bags is best regulated from 20-200 micrometers. Thus, it is reasonable to summarize that the bag as disclosed by Suzuki is a thin polyethylene bag wherein the thickness of the polyethylene bag is predetermined to ensure better dispersion with the binder composition contained therein during heat processing.

Conversely, the claimed invention explicitly detailed how 'pre-compatibilization' of the packaging material or container with a clear binder allows for the production of bags or containers with thicker wall (paragraph [0022]). Unlike Suzuki, the thicker walled containers of the claimed invention, due to the 'pre-compatibilization', melts ably with clear-binder product contained therein during heat processing. Further, such thicker walled containers are desirable as reinforcement structures which allow safer handling, longer storage time, reduced risk of punctures and subsequent leakage.

In view of the above, the claimed invention is not anticipated by Suzuki.

#### **Rejection under 35 U.S.C. § 103**

The Examiner has rejected Claims 2 and 9 as being unpatentable over Suzuki under the pretext that a change in size, is generally

Applicants :	MARCHAL et al.	Atty. Dkt. No.	: 1143-PCT-US
USPN	: 10/558,930	Art Unit	: 3728
Filed	: February 1, 2007	Date of Office Action	: July 27, 2009
Examiner	: John G. Pickett	Date of Response	: January 27, 2009
Page	: 11		

seen as being within the level of an ordinary skill in the art and therefore both Claims 2 and 9 are deemed to be obvious.

For the flowing reasons, claims 2 and 9 are not obvious in view of Suzuki.

Suzuki revealed a packaging in the form of a bag, formed from a thermoplastic resin film which contained a clear binder product therein. The abstract of the disclosure further revealed that the size of the pack is specifically regulated to hold a capacity of 140-500g of binder product. Such capacity is preferable as it allows for easier handling, storage, transportation and subsequent usage of the pack. Further, Suzuki discloses that producing a pack with capacity of less than 100g or exceeding 600g are highly unfavorable as said pack *'may not fuse enough in predetermined time within a mixer'* and the preferred capacity is 150-500g (Paragraph [0020]).

Contrastingly, the claimed invention discloses the capacity of the package and/or container made from the packaging material having capacity between 0.1 to 50 liters, wherein the preferred capacity is within 2 liters to about 5 liters and more preferably approximately 3 liters (paragraph [0016]).

A liter of water is defined by the volume occupied by a mass of 1 kilogram of pure water, at 4°C and at standard atmospheric pressure. As it can be reasonably deduced that the packaging material of the claimed invention which consists of a combination of plastic or polymer materials and a clear-binder posses greater specific density than that of pure water, therefore a liter of said packaging material will posses a mass of larger than 1 kilogram. In this instance, the bag or containers as disclosed by

Applicants : MARCHAL et al.  
USPN : 10/558,930  
Filed : February 1, 2007  
Examiner : John G. Pickett  
Page : 12

Atty. Dkt. No. : 1143-PCT-US  
Art Unit : 3728  
Date of Office Action : July 27, 2009  
Date of Response : January 27, 2009

the claimed invention have a weight capacity of about 100 grams to 50,000 grams.

It is evident from the above that a higher capacity of material as disclosed in the claimed invention goes against the teaching of the Suzuki prior art. While Suzuki teaches the capacity range of 140 to 500 grams and it explicitly described that having a capacity in excess of 600g leads to unfavorable results which may subsequently lead to difficulty for dispersion during heat processing, the claimed invention teaches the solution to the problem of accommodating for a higher capacity, in excess of 600 grams (equivalent to 0.6 liters) without compromising the dissolution of the containers with the product contained therein during heat processing. This is because the packaging material in the claimed invention comprises the plastic or polymer material and the clear-binder material thereby providing for the clear-binder materials to be "pre-blended" such that the resultant packaging material are "pre-compatibilized" for dispersion into the clear-binder product during a melting process (paragraphs [0013] and [0022] of the claimed invention) as described in the preceding paragraphs.

Accordingly, applicant respectfully submits that the invention as claimed in the amended set of claims are non-obvious over the prior art and entry of the amended claims is respectfully requested.

#### **Double Patenting**

Applicant has respectfully cancelled claim 4 and amended claim 5. The feature in claim 4 is incorporated into claim 1 to better describe the invention.

Applicants : MARCHAL et al.  
USPN : 10/558,930  
Filed : February 1, 2007  
Examiner : John G. Pickett  
Page : 13

Atty. Dkt. No. : 1143-PCT-US  
Art Unit : 3728  
Date of Office Action : July 27, 2009  
Date of Response : January 27, 2009

### Conclusion

Applicants respectfully maintain that all grounds of rejection raised in the July 27, 2009 Office Action have been addressed and urge the Examiner to render favorable action for the claimed invention.

If a telephone interview would be of assistance in advancing the prosecution of the subject application, the Applicants' undersigned attorney invites the Examiner to telephone him at the number provided below. If any additional fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 50-1891.

Respectfully submitted,

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